Previous references.

File No. 470

1907.

Serial Nos. 142

(Courts)

Later references.

pri 34-12-(1-4)

GENERAL AND REVENUE SECRETARIAT.

Serial Nos. 92

Part B. for August 1908

SUBJECT.

Memorial of Bile gowda accused of murder in Kodur Sessions Case no: 2 of 07-08 made appellant in Criminal Appeal no: 103 of 07-08 on the file of the Chief Court

---

From The Registrar of the Chief Court of Mysore
No. 8377/439 dated 30.6.08

Forwards a memorial from Bile gowda accused of murder in the Kodur Sessions, under Sentence of death praying for mercy and submits the records of the Case.

2. To The Registrar Chief Court no 470 of 7.8

G. R. S. 58

forwards for information of the Judges of the Chief Court and for communication

prisoner Bale gowda a copy of the order of His Highness the Maharaja of Mysore passed on his memorial Commuting the sentence of death passed on him into one of transportation for life.

RS 1+2 B.

(1)

G.R.S. 11] 1908-09.

GENERAL AND REVENUE SECRETARIAT

(Courts.)

NOTES.

C/o File. No. 7-08.

FILE HEADING.

Memorial of Bile Gowda, accused of murder in Kadur Sessions Case No 2907/08 and applicant in Criminal appeal No 103 of 07/08 on the file of the Chief Court.

From

The Registrar of the Chief Court of Mysore

No. 8397/439 Dated 30.6/1.7 08 Received 3.7.08.

Diary No. 125	Enclos. 2 + file Spare Copies. 9 records.	Serial No. 1

BRIEF ABSTRACT OF LETTER.

Forwards a memorial from Bilegowda, the said accused person, now under sentence of death, praying for mercy. and submits the records of the case.

NOTES AND ORDERS.

(1) Submitted for orders.

Secy SW 3.7.08 4.7.08

(2) This is an appeal praying for mercy from one Billegowda, who has been sentenced to death after trial

NOTES—First sheet.

GPB—30,000—20-3-06

of the Shimoga Dist.

Serial No.

in the ~~Kadur~~ Sessions Court and whose conviction and sentence have been upheld by the Chief Court. The main ground of the memorialist in his prayer for mercy is that there was long-standing enmity between him and Mr Playfair of the Cheppu-Gutti Coffee estate near Mudgere who, according to the memorialist, brought all this trouble on him.

(3) The facts of the case are:- One Dasa, the tappal peon of Mr Playfair was sent by him as usual to get his tappal from Mudgere on 12th October 1907. Dasa went to the post office, cashed a 100 Re currency note for Mr Playfair and left the post-office at about 4 P.M with the tappal bag. This is according to the evidence of the Post master. He did not return that night to the estate and it was first thought that he had absconded with the money. However, on the 16th October, ie four days after, his Dasa's dead body was found by one Ezra, his substitute. Enquiries elicited the fact

Note—Contn sheet.

GPB—50,000—17-3-07

Serial No.

that the deceased Dasa was last seen in Company with the present Memorialist, Billegowda. He the latter was arrested, made a confession before the Magistrate and was Committed to the Sessions where he was tried and found guilty.

(4) ~~The~~ Two ~~most~~ noteworthy points in the Case are (1) that the prosecution wanted to establish their case by means of two eye-witnesses and (2) that the accused pleaded an alibi; but both attempts failed. While the defence of alibi was negatived even by the defence witnesses themselves, the Sessions Court and the Chief Court place no reliance whatever on the evidence of two boys who were or said to have been grazing cattle Land by and who were said to have witnessed the murder.

(5) We are therefore left with the circumstantial evidence adduced by the prosecution in support of their case. On account of its nature circumstantial evidence has to be

GPB—50,000—17-3-07

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Carefully scrutinised.

(6) (1) The most important links in the chain of circumstantial evidence as adduced by the prosecution are three (1) That the ~~accused~~ deceased was last seen in the Company of Bilegowda the memorialist.

(7) (2) That the Cappal bag and the gunny bag which were admittedly with the deceased were found out only on the information supplied by the memorialist

(3) and that the amount in cash (Rs. 40/) was missing from the Cappal bag; and that on the Friday following the murder, the memorialist paid Rs — and he himself admits it — Rs 37 to his mother-in-law.

(7) The value of each of these of course, varies greatly; but, as regards (1), it raises a very strong presumption against the memorialist. That he was seen with the deceased on the evening of Friday Saturday the 12th October is proved beyond a shadow of doubt. There is the evidence of P. Witnesses, Nanjachan

NOTE.—Contn sheet.

GPB—50,000—17-3-07

Serial No.

P. W. 7, Swamandan P. W 8 and Rupchand P. W 9. And what is more important is Ex B — a letter from Mr. Playfair to the Police Inspector Madgire dated 15th October 1907 in which this fact that Billegowda was last seen with the deceased, is stated, when there was no suspicion as yet, that Dasa was done to death. As regards No. 2, the evidence of the Amildar P. W. 5 and that of Bhadregowda, P. W. 13 established that it was on the information of the memorialist that the tappal bag & the canvas bag were found. It is true they ~~was~~ were not discovered on the day the body was found. But it was naturally supposed that whoever committed the murder had taken them with him. The fact that they were found later on strengthens the case for the prosecution. This piece of evidence is certainly ~~very~~ very damaging to the memorialist.

One curious fact, not noticed either by the Sessions Court or the Chief Court is that only the cash in the

NOTE.—Contn sheet.

GPB—50,000—17-3-07

in the tappal bag was taken away but not the notes. Perhaps the murderer was intelligent enough to see that taking away notes would make detection more easy.

As regards point (3) there is evidence that he owed money to his mother-in-law, that she was asking for it and the memorialist paid her Rs 37 just on the Friday following the murder. This is spoken to by the mother-in-law herself. The significance of these facts cannot be overestimated.

(8) The chain of evidence is thus complete. The memorialist is last seen with the deceased. Naturally, he knows that the deceased has money in his tappal bag. After the murder the cash the memorialist pays to his mother-in-law nearly just the amount missing from the tappal bag. Nor could he account satisfactorily as to how he suddenly got the money. And all this evidence is not rebutted in the slightest manner.

Note—Contn sheet

GPB—10,000—181-07

Serial No.

(9) There are no circumstances to extenuate the grave offence committed. The memorialist is a man of 23 and the murder, as the Chief Court observes, seems to be a cold-blooded one, done from a sordid motive. (Under Secy) Secy) 6/7/08

CSB 6/7/08

Circulate - 6.7.08

(10) In the appeal petition to the Chief Court, the case for the accused is put in a much better way than in the petition addressed to H.H. the Maharajah -

(11) 2 - On a careful consideration of the facts & features of the case, it seems to me that there is no reasonable doubt that the accused did really cause the death of the deceased by violent means -

(12) 3 - At the same time, it does not appear to me that a case in which (quashing the Sessions Judge) "the crime was of deliberate, brutal, and sordid

GPB—10,600—181-07

Serial No.

could for which no sort of mitigating circumstance exists under sec 302 I.P.C." I wonder what phrases the Judge would have employed if the accused knew the errand on which Mr Haydon was sending the deceased had dogged his (the deceased's) steps & from Mudefore, had engaged one or two accomplices to ensure success in the deed, and had murdered the deceased for the money, the whole money & nothing but the money, employing not merely the violence which the post mortem examiners have said have been used, but also the poison (arsenic) which was found on the accused's person when caught - There is no evidence or even allegation of any of these things - On the contrary there is much to show that there was only a drunken brawl between them -

(13)4 The manner in which the accused is stated to have grumbled about the Capal bag

G.P.P.—10,000—18-1-07

Serial No.

bag on in the very neighbourhood of the corpse which had already been discovered by Cosby Ena, shows that there had not been any careful or deliberate disposal of them by him - It is quite compatible with the police tutoring which, in his confessional statement, the accused says he had undergone.

(14) 5 - I doubt that the ₹37 which the accused paid to his mother-in-law was out of the ₹40 cash which the post master had placed in the postal bag. It is more likely that he had got the amount by selling goats as stated by him in his deposition before the Sessions Judge - He named certain persons in this connection, but none of them was examined by the Judge - If money was what he coveted, the chances are that he would have taken the currency notes also - He could have counted them

GPB—10,000—18-1-07

Serial No.

them into Cash after long concealing them - It Malwad Govinda like the accused could cash the Cheques of 10 & 20 Rs denomination, even as the deceased's paid mother had a 5 Rs Cheque & Cash & sent it with the deceased with that purpose -

(15th) 6 - Law Therefore inclined Dapee with the assessor who said that in his opinion "the accused was not guilty of Murder but culpable homicide not amounting to Murder, as Heshe he struck the fatal blow and killed Dasa, not with the intent of committing theft but in anger during the heat of a sudden quarrel"

(16) 7 - In this view I concur & recommend that the sentence of death be commuted into transportation for life or rigorous imprisonment for 14 years -

Sections 302, 304, & 55 of the Indian Penal Code -

Note—Court Office

GPB—10,000—18-1-07

Red 5-708

Serial No.

852
8-7-08

(17) The Chief Judge says that there is an entire absence of any mitigating circumstances in favor of the accused (memorialist). The same was the view taken by the Sessions Judge. There is absolutely no evidence to show that the deed was done in the heat of a drunken brawl. The accused also found in a drunken state previously was free from intoxication when leaving Mudagere with the cash and money. This is testified to by the Post Master. This is a typical murder and it is notorious that such cases are very difficult of detection. The roll of undetected murders in the Mulnad is pretty long.

(18) There being no extenuating

Note—Contd. sheet

GPB—50,000—25-2-07

G. R. S. 12]
General and Revenue Secretariat.

17

W5 File No. 7 of 1908

Serial No.

circumstances to call.
for merciful Consideration
I would reject the petition
for mercy and allow the
law to take its own course

J W Nathaniel
2d Councillor

8/7/08.

Dewan 4/7/08

NOTE—Contn. sheet

GPB—50,000—25-2-07

C. 10 Dated 7.7.08.

13

Submitted to His Highness.

(19) I submit the memorial of Bile Gowda, who has been convicted by the Sessions Judge of the Shimoga Division of the murder of one Dasa, praying for the remission of the sentence of death passed on him by the Sessions Judge and confirmed by the Chief Court on appeal.

(20) The facts of the case are clearly set forth in the Judgment of the Sessions Judge and in the office notes. The chief points in the evidence are that the deceased was last seen in the company of the accused, property which was with the deceased before death was discovered on information given by the accused, a sum of Rs.40 which was in the tappal bag carried by the deceased was missing when the bag was found, and a sum of Rs.37 was paid by the accused to his mother-in-law a few days after the date of Dasa's death. The prosecution produced two boys who said that they saw the accused giving the deceased a blow on the head with a stick; but the Sessions Judge and the Chief Court have rejected this evidence as unreliable. The accused made confessional statements before the Sub-Divisional Magistrate of Chickmagalur and also before the Committing Magistrate; but before the Sessions Judge he brought a plea of alibi, which was however not proved.

(21) The First Councillor says that there can be no reasonable doubt that the accused did really cause the death of the deceased by violent means; but for

reasons stated in his note he thinks that the death sentence may be commuted to one of transportation for life or rigorous imprisonment for 14 years. The Second Councillor observes that the Chief Judge says that there is an entire absence of any mitigating circumstances in favour of the accused and that, although the accused was found in a drunken state before leaving Mudgere, there is absolutely no evidence to show that the deed was done in the heat of a drunken brawl. He therefore thinks that the petition for mercy should be rejected and the law allowed to take its own course.

(22) The memorialist in his memorial to His Highness says:-

i. That there was long standing enmity between the memorialist and the complainant on account of a woman and on account of some money transactions;

ii. That the witnesses who deposed against him were the coolies of "the European gentleman" and were instigated and tutored by him to depose falsely against him;

iii. That the complainant as well as the Police threatened his witnesses and induced them not to give evidence on the memorialist's behalf, and that therefore he was not able to defend himself properly.

(23) These allegations, however, are made now for the first time and did not form the ground of his defence in the Court below; and in the absence of specific evidence in support of them, they would be rejected by a Court of justice especially when they are made at this late stage.

(24) But the position of the Sovereign whose prerogative of mercy is invoked is different and facts

like the following may be allowed some consideration in deciding whether the extreme penalty of the law may not be mitigated in the present case.

(25) The man that was murdered was the tappal cooly of Mr. Playfair the Planter. It was another cooly of the planter who discovered the corpse of the murdered man and gave information to him. Mr.Playfair from information supplied to him named the accused as the murderer from the beginning. It was he who put the Police on the track of the accused Bile Gowda, supplying them with information about the accused's usual haunts, and took active steps to capture him; indeed, if the Prosecution witness No.16 is to be believed, it was Mr. Playfair himself that was chiefly instrumental in causing this witness, by threats of getting him punished, to point out the accused to the Police and was present with the Police when accused was captured. When the accused was arrested he was taken to Mr. Playfair's bungalow with his hands tied behind his back under Mr. Playfair's own direction (see his evidence as Prosecution 1st witness). After the escape of the accused from the bungalow, where he had been detained, Mr. Playfair sent search parties, as the result of which the man was re-arrested. The accused is an ignorant cooly and was once working on Mr. Playfair's estate. It is conceivable that when suddenly confronted with such overwhelming odds against him he was not in a position to say all that he might wish to say in his defence.

(26) In the next place, there is absolutely no trustworthy evidence in regard to the facts attending the actual murder, the evidence of the two boys put forward as eye-witnesses being rejected by the Courts themselves as unreliable. The confessional statements

relied on by the Sessions Judge are too brief and uncircumstantial to throw light on the point.

(27) On the whole I must say that though the Sessions Court and the Chief Court were justified, on the evidence placed before them, not only in holding the accused guilty of murder but also, in the absence of extenuating circumstances which it was for the accused to establish, in awarding the extreme penalty of the law, it is quite open to His Highness the Maharaja to take into account the peculiar features of the case above mentioned, and, in the exercise of the sovereign prerogative, to commute the sentence of death to one of transportation for life.

17/7/1908

Record of Cases submitted for the Orders of His Highness the Maharaja.

Subject.

(28) Memorial of Bile Gowda accused in Kadur Sessions Case No.2 of 1907-08, and appellant in Criminal appeal No.103 of 1907-08, on the file of the Chief Court praying that the sentence of death passed on him may be set aside.

Order.

97

(29) The sentence is commuted to one of transportation for life.

KRW
5/8/08

(30 Issue orders at once
7/8/1908

Serial No.

2.

To the Registrar, Chief Court No J 470 dt 7.8.08

Forwards for the information of the Judges of the Chief Court and for communication to Sriman Bibe Gowda, a copy of the order of His Highness the Maharaja of Mysore, passed on his memorial, commuting the sentence of death passed on him to one of transportation for life.

(3) Resubmitted for perusal after issue, to the I and II Councillors.

8/8/08

8/8/08 SN 8/8/08

Seen

24 Aug 08

Sulv to Hon Cr.

SN 25/8/08 Seen

25/8/08 HSL

No: 8397 Rec'd 25 Rec'd 25 c/s 1908 Sl.
439

Bangalore, 30th June 1908.

From V. A. Rajaratna Mudaliar Esqr.,
Chief Court of Mysore.

To L.S. Chandrasekhara Aiyar Esqr.,
Secretary to Government,
General & Revenue Departments.

Sir,

I am directed to forward a memorial addressed to His Highness the Maharaja by Bile Gowda, accused in Kadur Sessions case no. 2 of 1907-8 on the file of the Sessions Judge, Shimoga Division, and appellant in criminal appeal no. 103 of 1907-8 on the file of this Court.
Referred Case no. 7

The entire record of the case is herewith forwarded.

I have the honor to be,

Sir,

Your most obedient Servant,

V. A. Rajaratna Mudaliar

for Registrar.

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To

His Highness Sree Krishna Raja Wodayar
Bahadur G.C.S.I.

Maharaja of Mysore.

The humble memorial of condemned prisoner no: 1322 Biligowda of Bangalore Central Jail most respectfully sheweth: —

That he (the memorialist was sentenced to suffer death by the Sessions Judge Shimoga Division in Kadur Sessions case no: 2 of 1907-08 and that the Sentence was confirmed by the Chief court of Mysore in criminal appeal no: 103 of 1907.
Ref case no 7

Your Highness humble memorialist most respectfully begs to submit the following to your Highness's kind consideration fully trusting that the memorialist's life will be kindly spared:

1) It is apparent by the judgments of the sentencing court as well as that of

of the Chief court that the crime passes short of murder, the Sessions Judge erred in not giving the benifit of doubt to the memorialist, and the evidence on record is not sufficient to give the capital punishment to the memorialist, but notwithstanding this it was the unfortunate lot of the memorialist to get the sentence of death passed upon him contrary to law and justice.

2) The Honourable Judges of the Chief court have also erred in upholding the sentence of the Lower court. That this is a fit case in which your Highness may kindly show mercy and pardon the sentence of death passed upon the poor innocent memorialist, and thus save the life of an innocent subject of your Highness

3) There was a long standing feid between the memorialist and the complainant on account of a woman, and that the witnesses who deposed against the memorialist in the Sessions court are the coolies of the European gentleman (the complainant) and were instigated and tutored by

by him to depose falsely against the memorialist

4) The memorialist's defence witnesses were threatened by the Inspector of Police Mudigere, and by the complainant, not to give evidence on the memorialist's behalf, and that therefore he was not able to properly defend himself in the sentencing court.

5) The memorialist most humbly begs your Highness to kindly send for the whole records of the case as well as the bond which has given in writing to the complainant friend from which it will be known that the memorialist had money transactions with the coffee planter and that there were many causes for the bitter enmity between him and the complainant.

6) The memorialist is a respectable agriculturist and is the only son of an aged father, and that he has been made a victim of circumstances and that he did not really commit the murder

The deceased was a Kohar by caste and that there was no enmity or friendship between him and the memorialist

memorialist, and consequently there was no cause whatever, direct or indirect, for the memorialist to murder the innocent Robian

In conclusion the memorialist most respectfully and humbly prays your Highness to kindly save the life of the innocent memorialist from the jaws of death in which he is situated at present.

For which act of mercy the memorialist ever prays for His Highness's long life and prosperity

mark of Bukenda
Pte no. 1382 B. Bail

29.6.08

Cr. Cases 6-9 / 1907-08

In the Chief Court of Mysore at Bangalore.

Monday, the 22nd day of June 1908.

:::Ouo.

Present.

Mr Justice Stanley Ismay, C.S.I., Chief Judge,

and

Mr Justice P.S. Krishna Rao, Rao Bahadur.

Petition of Criminal Appeal No.103/Referred case No.7 of 1907-Against the conviction and sentence by the Sessions Judge, Shimoga Division, under section 302 Indian Penal Code, in Kadur Sessions Case No.2 of 1907-8.

Appellant.

Bili Gowda.

(accused)

Judgment.

The Chief Judge :-

This is an appeal from a sentence of death passed against the accused Billigowda by the Sessions Judge of the Shimoga Division. The facts are simple and are clearly set forth in the judgment of the lower court. The case for the appellant has been argued at considerable length in this Court, but I may say at once that the chain of circumstantial evidence is such as to leave in my mind no reasonable doubt as to the guilt of the accused. That Dasa was killed by some one on or about the 12th October 1907 is not and could not be seriously disputed. On that date he and the accused were seen together at Mudgere by Sivanandum (prosecution witness 8) who reported the fact to Inspector Penmaiya (prosecution witness 20) two days afterwards. This evide is of special value because at that time there was no suspicion that Dasa had come to a violent end; on the contrary it was believed that he had absconded with certain monies with which he

had

had been entrusted. The statement of Sivanandum is corroborated by Rupchand (prosecution witness 9) and Manjacharri (prosecution witness 7) and the fact that accused denies having been at Mudgere in Dasa's company on the 12th October cannot but raise a very strong presumption against him.

Two boys namely Punkha (prosecution witness 10) and Eara (prosecution witness 11) have been put forward as eye-witnesses of the murder. Their evidence appears to have been only forthcoming on the 11th November and for the reasons given by the Sessions Judge I would reject it as absolutely untrustworthy.

But the evidence as to the finding of the tappal bag on information given by the accused, coupled with the admitted fact that on the Friday following the murder the accused paid his -- mother-in-law Giddamma (prosecution witness 15) Rs37/- tells very heavily against the accused. Then there are the confessions made on the 31st October and the 5th December. The former confession is no doubt open to the objection that it was made while the accused was in police custody but there is no apparent reason why the statement made before the committing Magistrate --- should not be accepted as genuine.

The defence is a blank denial of facts which are proved beyond all doubt. The accused was not at Mudgere in Dasa's company, he did not show the place where the gunny bag and the tappal bag were concealed and his confessions were made under police influence. I decline to believe that the entire evidence has been fabricated and I hold it to be proved beyond all reasonable doubt that Dasa met his death at the hands of the accused. It has been faintly argued that the crime falls short of murder and in this connection I would point out to the Sessions Judge that his summing up to the assessors does not appear to be quite correct. In my view it is not necessary for an accused to plead the existence of circumstances bringing his case within any general or special exception. The burden of proof imposed by ---

section

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section 105 of the Evidence Act can be discharged by the evidence for the prosecution equally with the evidence for the defence. The matter is however important in the present case as there is no evidence of any facts which would reduce the nature of the offence as charged.

I concur then in the finding at which the Sessions Judge has arrived and, in the ~~absence~~ entire absence of all mitigating circumstances, the law must take its course.

The appeal is dismissed and the sentence of death passed on the appellant is confirmed.

~~Chief Judge.~~

Mr Justice P.S. Krishna Rao :-

I concur.

True copy
~~Judge.~~

S.R.

Dy: Registrar

In the Matter of a Memorial

from Bile Gowda accused in Kadur Sessions Case No. 2 of 1907-08, and appellant in Criminal Appeal No. 103 of 1907-08, on the file of the Chief Court praying that the sentence of death passed on him may be set aside;

His Highness the Maharaja

has been pleased to pass the following

Order.

The sentence is commuted to one of transportation for life.

M. Venkatarao

Dewan.

8

No. J 470/ch 7-08 2

MYSORE GOVT. GEN. & REV. SECRETARIAT.

Dated Bangalore...7/8/...1908

From

The Secretary to the Government of H. H. the Maharaja of Mysore.

To

The Registrar of the Chief Court of Mysore.

SIR,

I am directed to forward herewith for the information of the Judges of the Chief Court and for communication to the prisoner Bile Gowda accused in Kadur Sessions no 7 of 1907-08 undergoing sentence of death in the Central Jail, Bangalore, copy of order passed by H. H. the Maharaja of Mysore, on the prisoner's memorial commuting the sentence of death passed on him to one of transportation for life

2. The entire records received with your letter No. 8397—439 dated 30th June 1908 are herewith returned.

I have the honor to be,

SIR,

Your most obedient servant,

for Secretary.

BH
7.8.08.